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No. 01-270

In the Supreme Court of the United States

YELLOW FREIGHT SYSTEM, INC.,

Petitioner,

v

STATE OF MICHIGAN, *ET AL*,

Respondents.

On Petition For Writ Of Certiorari To The Michigan Supreme Court

BRIEF FOR THE STATE OF MICHIGAN, *ET AL* IN OPPOSITION

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QUESTION PRESENTED

Under the Single State Registration System, 49 USC 14504(c)(2)(B)(iv)(III), a State is authorized to charge a fee "that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991." In September, 1991, the Respondents State of Michigan, *et al* mailed renewal registration forms to the Petitioner charging $10 per vehicle for the 1992 registration year. In October, 1991, the Petitioner paid those registration fees. The question presented is whether such fees were "collected or charged as of November 15, 1991" within the meaning of 49 USC 14504(c)(2)(B)(iv)(III).

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STATEMENT OF THE CASE

The Petitioner asserts that the Court should grant review because the Michigan Supreme Court decision below is in conflict with a decision of the D.C. Circuit. However, this case, which was litigated on facts not before the D.C. Circuit, does not warrant this Court's review. Indeed, the Petition provides scant information about how and why the controversy arose. Moreover, the Petition creates the impression that critical facts below were undisputed, particularly as to the amount of the fee that was charged and collected as of November 15, 1991. The Respondents, however, have consistently maintained throughout this litigation that the challenged $10 per vehicle fee was lawful precisely because it was charged and collected from Petitioner prior to the statutory cut-off date of November 15, 1991. Moreover, the Respondents did not ignore or cancel any reciprocity agreements. While the Michigan Supreme Court did not agree with the D.C. Circuit, it clearly reached the proper result in this case for reasons other than stated in its opinion. Finally, the Petitioner's parade of horribles is baseless as it is unlikely that the Michigan Supreme Court's decision will result in a stampede of states canceling long-standing reciprocity agreements in an effort to increase revenues. In short, this case is a poor vehicle for resolving the conflict alleged by the Petitioner. After briefly outlining the background legal framework applicable to this case, the Respondents set forth critical facts not contained in the Petition.

1. Congress enacted the Motor Carrier Act of 1935, 49 USC 301 *et seq*, to provide for limited state regulation of interstate commercial transportation. Through various amendments, States were authorized to register interstate motor carriers, subject to supervision of the Interstate Commerce Commission (ICC). Under this registration program, which began in 1965, States choosing to participate were allowed to charge up to $10 for each vehicle registered. As proof of registration each State issued a stamp for each vehicle and

these stamps were placed in the appropriate state spot on "bingo cards" carried in the cab of each vehicle.[1]

2. In Michigan, although the Michigan Public Service Commission (MPSC) had reciprocity agreements with several states and provinces pertaining to fees for motor carriers in interstate commerce, it did not issue bingo card stamps to interstate, foreign and exempt interstate motor carriers until the Michigan Legislature enacted 1988 PA 347 (Act 347), an amendment to the Michigan Motor Carrier Act, 1933 PA 254, MCL 475.1 *et seq.* Act 347, which became effective January 1, 1989, authorized the MPSC to begin charging fees[2] for each vehicle of interstate motor carriers. See, MCL 478.7(4). Additionally, Act 347 permitted the MPSC to enter into reciprocity agreements with other states that did not charge vehicles licensed in this state. Thus, beginning in the fall of 1989, the MPSC began issuing bingo card stamps for the registration year beginning 1990.

3. As of 1991, 38 States, including Michigan, participated in this registration system. Some, but not all States entered into reciprocal arrangements under which they would discount or waive the fee for carriers based in each other's state. Most States used the motor carrier's principal place of business as the basis for determining reciprocity. Michigan, however, used the State in which the vehicle was base-plated, i.e. where it was registered or license plated, as the basis for determining reciprocity. Under this approach, for registration years 1990 and 1991, Michigan did not charge a fee for

[1] Motor carrier vehicles may carry any number of different cab cards in the cab of each vehicle. Examples include cab cards for the International Registration Plan (IRP), the International Fuel Tax Agreement (IFTA), the "bingo stamp" card for vehicles that operate interstate, and cab cards for each state in which a vehicle may operate intrastate.

[2] As originally enacted, 1988 PA 347 provided that the MPSC was required to charge an annual fee equal to the charge levied on Michigan-licensed motor carrier vehicles in the other state. In 1989, the Michigan Legislature enacted 1989 PA 221 which amended this section by changing the annual registration fee on each vehicle to $10.00.

vehicles base-plated in a State that did not charge a fee for vehicles that were base-plated in Michigan.

4. Early in 1991 the MPSC determined that granting reciprocity using base-plating, rather than place of business, was unduly complex, inefficient to administer, and inconsistent with the registration system used by virtually all other states. See Affidavit of Thomas R. Lonergan. Respondents' Appendix (Res. App.), p. 4b. For example, vehicles operated by a single motor carrier but base-plated in several different States required several different calculations. *Id.* This significantly increased the possibility of error in reciprocity waivers. *Id.* Further, it became apparent to Michigan that it was one of a very few number of States using this system as opposed to the principal place of business as the basis for affording reciprocity.[3]

5. Contemporaneous with Michigan's determination that its method for determining reciprocity was difficult to administer and inconsistent with the approach of other States, Congress was considering legislation to streamline the state registration system. Recognizing that such legislation could include a mandatory uniform approach by participating states, the MPSC decided to terminate its use of base-plating as the method of determining reciprocity in favor of the "place of business" method of determining reciprocity to be consistent with other states. Res. App., p. 4b. Thus, early in 1991, Michigan brought its registration program in line with other state programs by adopting a revised reciprocity system based on the motor carrier's principal place of business. Rather than immediately implementing this change, the MPSC decided, for the convenience of the industry, it would implement the change in the fall of 1991 when the annual renewals occurred.

[3] Other states that had used base-plating included Oklahoma, North Carolina and Indiana. All the foregoing states participate in the Single State Registration System (SSRS) and now use principal place of business for determining reciprocity.

6. On December 18, 1991, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) was enacted into law. Pub L 102-240. 105 Stat 1914-2207. Included within ISTEA was Section 4005, "Single State Registration System" (SSRS). 105 Stat 2146-2148. 49 USC 14504(c). The SSRS created a streamlined system for the registration of a motor carrier's vehicles engaged in interstate commerce. Previously, motor carriers were required to separately register their vehicles in each state that the vehicles operated in. The SSRS implemented a single state filing concept where a motor carrier would only file in and submit payment to the state in which it was based. That single filing and payment would cover vehicle registrations and fees for all states where the motor carrier operated vehicles. The state in which the motor carrier is based then sends the registrations and fees to all other states where such vehicles are operated.

7. Congress provided that the SSRS was to take effect by January 1, 1994. 105 Stat 2148.[4] It further provided that the ICC was to prescribe standards for the SSRS. With respect to the fee system under the SSRS, Congress provided as follows at 49 USC 14504(c)(2)(B)(iv)(III):

> (B) Receipts; fee system. Such amended standards—
>
> > (iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that (I) will be based on the number of commercial motor vehicles the carrier operates in a State and on the number of States in which the carrier operates, (II) will minimize the costs of

[4] The effective date of the SSRS was set forth in Section 4005 of ISTEA and codified as 49 USC 11506(c)(3) and may be found at 105 Stat 2148. Subsection (c)(3) of 49 USC 11506 was not included in the subsequent recodification that occurred in 1995 when 49 USC 11506 became 49 USC 14504.

> complying with the registration system, and (III) *will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991.* 49 U.S.C. 14504(c)(2)(B)(iv)(III). (Emphasis added.)

8. In September 1991, two months prior to the November 15, 1991 cut-off date specified in 49 USC 14504(c)(2)(B)(iv)(III), Michigan sent out renewal interstate cab (i.e. bingo) card stamp application forms to motor carriers for the 1992 registration year. Res. App., p. 25b. On the back of the application form were instructions which stated that "[t]he cab card stamp fees are based on the state or province shown on the ICC certificate or permit as the carrier's base of operations." Res. App., p. 28b. The amount of fees appropriate to a motor carrier's fleet was determined by reference to an accompanying chart identifying cab card stamp fees. Res. App., p. 30b.

9. No change was made to Michigan's registration fee of $10.00 per vehicle, as authorized by MCL 478.7(4). Nor was there any change to Michigan's long-standing practice of collecting renewal fees in the fall for registration in the upcoming year, as is the practice with most, if not all, other States.[5] Moreover, there was no change in which states Michigan had reciprocity with. Michigan continued to exercise reciprocity with the same states, both before and after November 15, 1991. The only change was the basis for determining reciprocity, i.e. the fee would be determined on the carrier's principal place of business rather than on the license plating of a particular vehicle. The result was that some carriers that previously qualified for reciprocal fee discounts

[5] In fact, the SSRS requires motor carriers to register in the fall preceding the registration year. The SSRS procedures manual states that registrants must file an application for registration and pay fees no earlier than August 1 and no later than November 30 of each year for the upcoming year.

upon the base-plating methodology were no longer afforded a discount while others that had not been eligible for discount under base-plating were eligible for a discount under the principal place of business methodology.

10. One of the carriers affected by this change was Yellow Freight. In the calendar years 1990 and 1991, Yellow Freight had 3,730 vehicles base-plated in Illinois and Indiana. Under the base-plating method of determining reciprocity that Michigan had in effect at that time, Yellow Freight was not charged for those bingo card stamps as those states did not charge fees for vehicles base-plated in Michigan. See Affidavit of Thomas R. Lonergan, Res. App., p. 5b. Yellow Freight, however, was charged for five vehicles that were base-plated in Oklahoma. Res. App., p. 5b. After Michigan changed its method for determining reciprocity based on a company's principal place of business, Yellow Freight paid a $10.00 per vehicle registration fee for all its vehicles, as its principal place of business was in Kansas, and Michigan had no reciprocity with the State of Kansas. Res. App., p. 26b. The application form for the 1992 calendar year was mailed to Yellow Freight in September 1991. The application form was returned on October 3, 1991 with payment in full. Res. App., p. 25b. Since September, 1991 Michigan has annually charged and Yellow Freight has annually paid a registration fee of $10.00 per vehicle for each vehicle operated in Michigan inasmuch as Yellow Freight's principal place of business remains in Kansas and Michigan has no reciprocity with that state.

REASONS FOR DENYING THE PETITION

I. THE CONFLICT ALLEGED BY THE PETITIONER IS NOT A "SQUARE" CONFLICT SINCE THE CHALLENGED FEES WOULD BE LAWFUL UNDER THE D.C. CIRCUIT'S DECISION IN *NATIONAL ASS'N OF REGULATORY UTILITY COMM'RS v ICC.*

The Petitioner claims that certiorari should be granted to rectify an open and direct conflict between the D.C. Circuit

and Michigan Supreme Court. While the Michigan Supreme Court candidly noted its disagreement with the D.C. Circuit, the Respondents believe that the result in this case would be the same regardless of how the conflict is decided. This is entirely due to facts in this case that were not before the D.C. Circuit.

In *National Ass'n of Regulatory Utility Comm'rs v ICC,* 41 F3d 721 (DC Cir, 1994), the United States Court of Appeals for the District of Columbia Circuit upheld an ICC determination that under the SSRS participating states could not disregard reciprocity agreements and could not charge more than was collected as of November 15, 1991. The National Association of State Regulatory Utility Commissioners (NARUC) had appealed the ICC decision arguing that the ICC's decision unreasonably limited the States to charges that were assessed under circumstances not covered by the statute. *Id.* 41 F3d at 729. Additionally, NARUC argued that the ICC had failed to provide an adequate explanation of its decision, considering that the ICC had originally proposed to allow the States to disregard reciprocity agreements. *Id.* The D.C. Circuit rejected NARUC's challenge finding that because "[f]ederal law merely states that a state may not charge more than was charged or collected in the past" ... "the plain language of the statute precludes petitioners' interpretation." *Id.* (emphasis in original). The D.C. Circuit then added "[i]t does not matter whether Congress actually focused on the reciprocal discount practice or even was aware of it." *Id.*

In its decision below the Michigan Supreme Court, like the D.C. Circuit, found that the plain language of the statute controlled the outcome and applied the statute as written. The Michigan Supreme Court correctly noted that the ISTEA "refers only to the fee collected and charged, and contains no reference to reciprocity agreements." Pet. App., p. 9a. It notes that 49 USC 14504(c)(2)(B)(iv)(III) directed the ICC to "establish a fee system" that "result[s] in a fee, not to exceed $10 per vehicle, that such State collected or charged as of

November 15, 1991." *Id.* The Michigan Supreme Court then concluded:

> The new "fee system" is based not on the fees collected from one individual company, but on the fee system that the state had in place on November 15, 1991. We must look not at the fees paid by plaintiff in any given year, but at the generic fee charged or collected as of November 15, 1991. Pet. App., p. 9.

The Michigan Supreme Court held, as a matter of state law, that the fee charged and collected as of November 15, 1991 was $10. Pet. App., p. 10a. It also found that the ICC's position that States must consider fees charged or collected under reciprocity agreements when determining the fees charged and collected under 49 USC 11506(c)(2)(B)(iv) added a concept not within the express language of the statute. Pet. App., pp. 10a-11a.

What is striking is that under the facts of this case resolution of the conflict alleged is not necessary since the Respondents' actions are lawful under both the D.C. Circuit's and Michigan Supreme Court's decisions. This is because: 1) the Respondents did not disregard any reciprocity agreements; and 2) the Respondents charged and collected the challenged $10 per vehicle fee from Petitioner prior to November 15, 1991. In short, the conflict alleged by the Petitioner is not a "square one" or "on all fours" because under these facts, the Respondents' actions comply with the D.C. Circuit's decision.

Tellingly, the Petition neither fairly nor fully describes the facts in this case. At page 9, it claims that Respondents decided to ignore fees being charged under reciprocity agreements. It then, in a carefully worded sentence, claims that "it is undisputed that the fee which Michigan was charging as of November 15, 1991 for registering Illinois-plated vehicles to conduct interstate operations on that date was zero." It then

states that "[e]ffective February 1, 1992, however, Michigan changed its policy and began assessing a $10 per vehicle fee for Illinois-plated vehicles." The Petition, however, fails to disclose to the Court a number of critical facts.

First, contrary to the Petition's claim, none of the reciprocity agreements that Michigan had with other States were either ignored or canceled. The Respondents maintained and continued reciprocity with the State of Illinois both before and after the charging and collection of the challenged fees. All that changed was the method for determining reciprocity. Moreover, this change had nothing to do with increasing revenues. The effect was essentially a revenue wash since some carriers paid more while other carriers paid less. Furthermore, the changeover to using the principal place of business methodology for determining reciprocity was critical to the Respondents being able to participate in the SSRS. Res. App., p. 4b.

Second, the MPSC policy change referred to by the Petitioner occurred in 1991, not 1992. Moreover, the policy change was implemented in September, 1991 when the Respondents, consistent with past practice, began charging and collecting the $10 per vehicle fee for the upcoming calendar year.

Finally, the Petition's statement that, as of November 15, 1991, it is undisputed that the fee charged for registering Illinois-plated vehicles to conduct operations on that date was zero is both misleading and irrelevant. As the Respondents' Statement of the Case clearly demonstrates the $10 per vehicle fee being challenged in this case was both *charged to and collected from* the Petitioner prior to November 15, 1991. Although the Michigan Supreme Court noted this fact, it did not figure in its disposition of the case. The D.C. Circuit's disposition of the case before it, however, was decided on whether a State's fee was charged or collected as of November 15, 2001. Because the challenged fees in this case were actually charged and collected as of November 15, 1991, the

conflict alleged by the Petitioner is not a "square" conflict since the fees challenged by the Petitioner would be lawful under the D.C. Circuit's decision in *National Ass'n of Regulatory Utility Comm'rs v ICC, supra.*

II. THE MICHIGAN SUPREME COURT EXPRESSLY FOLLOWED THE DECISION OF THIS COURT IN *CHEVRON.*

The Petitioner contends that the Michigan Supreme Court erred in that it was required to defer to the ICC's interpretation with respect to reciprocity agreements because the ICC was delegated the authority to interpret the underlying statute to address such an issue. The Petitioner argues that this result is mandated by this Court's decisions in *Chevron USA, Inc v Natural Resources Defense Council, Inc,* 467 US 837 (1984) and *United States v Mead Corp,* ___ US ___; 121 S Ct 2164 (2001). The Michigan Supreme Court's decision, however, does not conflict with either decision.

In its decision, the Michigan Supreme Court quoted directly from *Chevron*, and applied its review criteria. Pet. App., pp. 8a-9a. The Michigan Supreme Court noted that under *Chevron,* a court must first determine whether a statute's meaning is clear; if so, then the Court must apply the statute as written. Pet. App., p. 8a. If, however, the statute is ambiguous, then the court must give deference to the agency's interpretation. *Id.*

In applying *Chevron* to this case, the Michigan Supreme Court first looked to the statute itself. Because it found the plain meaning of the statute to be clear, it followed this Court's directive in *Chevron* that the statute be applied as written. The Petitioner's reference to this Court's decision in *Mead,* which was issued subsequent to the Michigan Supreme Court's decision below, fails to add any luster to its argument.

The issue in *Mead* was whether a Customs Service tariff classification ruling was entitled to *Chevron* deference. In *Mead,* this Court held that "administrative implementation

of a particular statutory provision qualifies for *Chevron* deference when it appears Congress delegated authority to generally make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority." *supra,* 121 S Ct at 2171. This Court found that a Customs Service tariff classification ruling was not entitled to deference under *Chevron,* but was eligible to claim respect according to its persuasiveness under *Skidmore v Swift & Co,* 323 US 134 (1944). *See,* 121 S Ct at 2168.

The reference to *Mead* as well as the Petition's extended discussion of the nature of the ICC's rulemaking authority, however, are beside the point. This is because the Michigan Supreme Court applied the *Chevron* criteria when making its ruling.

III. THE PETITIONER'S PARADE OF HORRIBLES IS BASELESS.

The Petition claims that certiorari should be granted because this case involves a significant federal statute that impacts 38 states, the nation's trucking industry and has the potential of increasing charges to motor carriers by millions of dollars. The Petitioner's parade of horribles is baseless.

The facts underlying the Michigan Supreme Court's decision are unique to Michigan and not likely to recur in any other state. Nor is there any evidence that states in other jurisdictions will begin canceling reciprocity agreements in an effort to increase revenues as a result of the Michigan Supreme Court's ruling. As noted, Michigan's change in the methodology for determining reciprocity was not undertaken as a revenue increasing measure. Rather, it was done for ease of administration and to ensure Michigan's ability to participate in the SSRS. In short, the measure was revenue neutral in nature. Finally, while the Respondents did change the methodology for determining reciprocity, the Respondents continued to maintain reciprocity agreements with the same states both before and after changing such methodology. In short, no reciprocity agreements in this case were either ignored or canceled. Thus,

the uncertainty that is said to exist is conjecture rather than fact.

IV. THE MICHIGAN SUPREME COURT CORRECTLY RULED THAT THE REGISTRATION FEES CHARGED TO AND COLLECTED FROM YELLOW FREIGHT PURSUANT TO MCL 478.7(4) ARE AUTHORIZED BY THE PLAIN AND UNAMBIGUOUS LANGUAGE OF 49 USC 14504(c)(2)(B)(iv)(III).

At the core of the dispute in this case is whether the Respondents collected *or* charged the $10.00 fee, authorized by MCL 478.7(4), as of November 15, 1991. If the Respondents either charged or collected the $10.00 fee as of November 15, 1991 then 49 USC 14504(c)(2)(B)(iv)(III) authorizes it to continue to charge and collect that fee under the SSRS. As noted, the Respondents actually charged and collected the challenged $10 fee in question from the Petitioner prior to the November 15, 1991 deadline.

The Michigan Supreme Court viewed the fundamental question before it as whether Michigan's reciprocity agreements should be considered in determining what fees were charged and collected as of November 15, 1991. It correctly concluded that the reciprocity agreements were irrelevant in making that determination.

In arriving at its decision, the Michigan Supreme Court made a number of key findings. First, it correctly found that the SSRS refers only to the fee charged or collected and contains no reference to reciprocity agreements. Pet. App., p. 9a. Second, it found that because 49 USC 14504(c)(2)(B)(iv)(III) directs the ICC to "establish a fee system", the statute's focus is not on the fees collected from one individual company, but on the fee system that the State had in place on November 15, 1991. Pet. App., p. 9a. By way of further explanation, the Michigan Supreme Court stated under such an interpretation one looks not at the fees paid by the Petitioner in any given year, but at the generic fee Michigan

charged or collected from carriers as of November 15, 1991. Pet. App., p. 9a. It then found that consideration of what fees were charged under reciprocity agreements added a concept not contained in the express language of the statute, concluding that it was not for the ICC or the Court to insert words into the statute. Pet. App., pp. 10a-11a.

The Petition characterizes the Michigan Supreme Court's decision as advancing "virtually nothing in justification of its conclusion." Pet., p. 20. It criticizes the length of the Court's analysis saying it embraces less than two pages of the reported versions. Pet., p. 20. The Petition then argues that even the most strained attempt fails to breathe logic into the Court's ultimate conclusion. Pet., p. 21.

The Petition's hyperbole cannot, however, detract from the sound reasoning employed by the Michigan Supreme Court. The claim that the Court's decision offers virtually nothing in justification of its conclusion is spurious. As noted, the Court's decision was based on the actual language of the SSRS and its express reference to a "fee system." The Petition's attack on the length of the Supreme Court's analysis cannot be taken seriously since the legitimacy or strength of reasoning simply cannot be measured by the number of pages written. Indeed if it were, the Petitioner would be in trouble because the analysis and conclusion of the D.C. Circuit, which the Petitioner ascribes to, is less than a page in length. Finally, the claim that even the most strained attempt fails to breathe logic into the Court's ultimate conclusion is plainly wrong.

Throughout this litigation, the Petitioner has characterized the controversy according to what it was charged with regard to the November 15, 1991 deadline in 49 USC 14504(c)(2)(B)(iv)(III). The Michigan Supreme Court correctly recognized that this theory of the case was fundamentally flawed and inconsistent with the language of 49 USC 14504(c)(2)(B)(iv)(III), whose focus is on whether the State collected or charged a registration fee as of November 15,

1991 and not on what any individual motor carrier was charged.

The flaw in Petitioner's reasoning was succinctly described by the Michigan Court of Claims in a companion case,[6] as follows:

> The fact that an individual carrier was not assessed fees one year and was assessed fees the next year is irrelevant. The determining factor is location and is not focused on the individual carrier's mere existence. This narcissistic argument produces absurd results. It is a basic rule of statutory construction carried over from common law that absurd results should be avoided. *Fortunate v. Dept. of Transp.*, 449 Mich 991; 538 N.W.2d 669 (1995). If, for example, a carrier expands operations into the State of Michigan after November 15, 1991, then the State will be forever precluded from assessing a fee because the State did not previously assess a fee against that carrier's vehicles. Even more absurd is the situation where a carrier was not yet in existence as of November 15, 1991. In that case, all participating states would be precluded from assessing fees against that carrier because it never paid fees to any state prior to November 15, 1991. These possible results are contrary to the legislative intent of creating a fee system for the filing of proof of insurance. *Schneider Motor Carriers, et al v State of Michigan*, November 24, 1997 Opinion. Michigan Court of Claims Docket No. 96-16473-CM. Res. App., pp. 12b-13b.

[6] One other motor carrier contested the Respondents' collection of registration fees under the SSRS in *Schneider Motor Carriers, Inc, et al v State of Michigan*. Michigan Court of Claims No. 96-16473-CM. Schneider's challenge mirrored the one brought by Petitioner.

As for the language of 49 USC 14504(c)(2)(B)(iv)(III), it authorizes:

> . . . a fee for each participating State that is equal to a fee, not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991.

The foregoing is a general requirement. The focus is whether the State had a registration fee system in place and not what any individual motor carrier was charged. Inasmuch as Respondents had a registration fee system in place at all relevant times, including the 1991 calendar year, the Michigan Supreme Court correctly found that Respondents' actions fully comply with 49 USC 14504(c)(2)(B)(iv)(III).

V. THE PETITIONER'S RELIANCE ON THE ICC'S DECISION IN *AMERICAN TRUCKING* IS MISPLACED.

Throughout the Petition, numerous references are made to the ICC's decision in *American Trucking Associations – Petition for Declaratory Order – Single State Insurance Registration*, 9 ICC2d 1184 (1993). However, it is important to note that that decision was not even mentioned in either the Michigan Supreme Court's majority decision or in either of the dissents. Additionally, it should be noted that *American Trucking* was not included in the review performed by the D.C. Circuit in *National Ass'n of Regulatory Utility Comm'rs v ICC, supra*. *American Trucking*, however, did figure prominently in the decisions of the lower courts hearing the Petitioner's case. Although the Petition invokes the ICC's *American Trucking* decision in support of its claim that this Court should grant review, it is clear that such reliance is misplaced.

A. The interpretation of 49 USC 14504(c)(2)(B)(iv)(III) in *American Trucking* is contrary to the statute's plain and unambiguous language because it adds an unwritten qualification.

On August 27, 1993, the American Trucking Associations (ATA) filed a petition requesting the Commission to determine whether certain State actions were inconsistent with the above-cited statutory and regulatory requirements. Specifically, ATA alleged, first, that Kentucky had commenced participating in the new registration program even though, in ATA's view, Kentucky was not eligible to participate. ATA alleged, second, that Texas was ignoring the requirement that fees be frozen as of November 15, 1991, and was charging all carriers an across-the-board fee of $10. In this regard, ATA pointed to the Commission's determination that States must continue to observe reciprocity agreements that had the effect of reducing carrier fees, citing, *Single State Insurance Registration*, 9 ICC2d at 617-619. As a third point, ATA contended that several participating States (not including Michigan) were attempting to modify or had disregarded their reciprocity agreements and had raised fees beyond the levels that they had charged based on their reciprocity agreements under the previous registration system.

In response to the petition, by notice served September 16, 1993, and published at 58 Fed. Reg. 48,673 (1993), the ICC instituted a declaratory order proceeding and solicited public comment on the issues raised by ATA. Michigan did not file comments or otherwise participate in this proceeding because none of the issues raised in the ATA petition involved Michigan's implementation of the SSRS. In fact, ATA's proposal to freeze State reciprocity rules in effect as of November 15, 1991, was fully consistent with the changes to Michigan's reciprocity rules effectuated in September of 1991. Unbeknownst to Michigan, however, Yellow Freight filed comments which went beyond the issues identified in the ICC notice and raised in its comments the issue of whether the phrase "fees charged or collected as of November 15, 1991" was intended to include only fees related to the 1991

registration year and not the 1992 registration year. 9 ICC2d at 1192.[7]

Michigan was not served with Yellow Freight's comments nor did it otherwise have any actual or constructive notice that this issue had been raised. Notwithstanding the absence of any comments from parties on the other side of the issue, and without any discussion or analysis, the ICC concluded as follows:

---

[7] Specifically, Yellow Freight's comments stated:

> In the case of Michigan, Yellow Freight received reciprocity on the 1991 Michigan fees because of its Illinois base plate. As a result, Yellow paid zero fees to Michigan for 1991. *In 1992 Michigan changed the agreement* to reflect principal place of business and *the fee increased to $10.00 per vehicle.* Because of the size of Yellow's fleet *it purchased 1992 bingo stamps well in advance of display deadlines* to complete the administrative process. Now *Michigan advises* Yellow that its *fee under SSRS is $10.00 per vehicle solely* because Yellow *purchased its 1992 stamps under the new agreement prior to November 15, 1991.* Yellow Freight Comment, September 24, 1993, pg. 3. (Emphasis added.) Res. App., p. 22b.

Michigan, however, changed its reciprocity rules effective September 1991, not in 1992 as Yellow Freight alleged. Contrary to Yellow Freight's comments, Michigan did not advise Yellow Freight that its fee under the SSRS was $10.00 "solely because Yellow purchased its 1992 stamps prior to November 15, 1991." Yellow Freight's $10.00 per vehicle fee was due and owing, because of the change in the method of establishing reciprocity effective September of 1991. Moreover, the 1992 fee renewal applications setting forth the $10.00 charges under these revised reciprocity rules were mailed to all interstate carriers in September 1991 and were payable no later than December 31, 1991. Accordingly, the $10.00 registration fee was charged prior to November 15, 1991. Thus, Michigan charged Yellow Freight the $10.00 fee per vehicle under the SSRS because that is the fee that Michigan was charging prior to November 15, 1991 not because Yellow Freight purchased its stamps early. Notably, Michigan never changed the $10.00 per vehicle fee that was charged and collected prior to and after November 15, 1991. The sole change was to the basis of determining reciprocity.

> Yellow Freight has raised the issue of whether the statutory language concerning the "fee charged or collected as of November 15, 1991" relates to fees charged for the 1991 registration year or for the 1992 registration year. We think it clear that the statutory language concerns only fees charged or collected for the 1991 registration year, and we so find. 9 ICC2d at 1195.

The ICC's finding is contrary to the unambiguous language of the statute because it adds an unwritten qualification to the statute. That is, under the ICC's interpretation not only must the fees be collected and charged as of November 15, 1991, but they must also be for fees for the 1991 registration year. However, there is no language in the statute that limits the fees charged or collected to the 1991 registration year. In short, the ICC has rewritten the statute.

B. The interpretation of 49 USC 14504(c)(2)(B)(iv)(III) in *American Trucking* renders meaningless Congress's decision to use a day-specific date, November 15, 1991, as the cut-off deadline.

It is an elementary rule of construction that effect must be given, if possible, to every word, clause, and sentence of a statute. *Plaut v Spendthrift Farm, Inc.*, 514 US 211; 115 S Ct 1447; 131 L Ed 2d 328 (1995); *Sutherland Stat Construction*, §§ 46.06 (6th ed. 2000). No clause, sentence, or word shall be construed as superfluous, void, or insignificant if the construction can be found that will give force to and preserve all words of the statute. The importance of respecting the words chosen by Congress is evidenced by numerous decisions by this Court and various United States Circuit Courts. *Bridger Coal Co v Director Office of Workers Compensation*, 927 F2d 1150 (CA 10 1991); *Lake Cumberland Trust, Inc v United States Environmental Protection Agency*, 954 F2d 1218 (CA 6 1992); *United Technologies Corp v O.S.H.A.*, 836 F2d 52 (CA 2 1987).

Two decisions from the D.C. Circuit are particularly instructive in demonstrating that the statutory language chosen by Congress must be respected. First, in *Wisconsin Electric Power Co v Department of Energy*, 250 US App DC 128; 778 F2d 1 (1985), the D.C. Circuit held that an ongoing fee levied on the nuclear generation of electricity applied only to electricity generated and sold, but did not apply to the electricity that the generating plant itself consumed. In holding so, the Court rejected a Department of Energy interpretation that nullified certain language in Section 302 of the Nuclear Waste Policy Act of 1982, 42 USC 10222, stating:

> The utilities' reading of the statute comports with the plain language of the measure. In contrast, by the agency's interpretation, the two words "and sold" could just as readily have been left out of the statute in the first instance; indeed, the practical effect of DOE's interpretation is to blue pencil out two words in an already brief one-sentence provision.
>
> * * *
>
> *The Secretary's interpretation would thus have the unhappy result of obliterating express language from the subsection (a)(2)* provision, in contravention of long-settled principles of statutory construction. *** *Where the language Congress chose to employ is clear, the duty of the judiciary is likewise clear. We must follow that language and give it effect.* (citations omitted). 778 F2d at 3-4. (Emphasis added.)

Second, in *Indiana Michigan Power Co v Dep't of Energy and United States*, 319 US App DC 209; 88 F3d 1272 (1996), the D.C. Circuit reviewed an agency interpretation of 42 USC 10222(a)(5)(B) that provided that in return for the payment of fees, the Department of Energy "beginning not

later than January 31, 1998, will dispose of the high level radioactive waste or spent nuclear fuel" from commercial nuclear power plants. The Department of Energy had argued that its obligation to take nuclear waste by the January 31, 1998 deadline was conditioned upon the existence of an operational repository. The D.C. Circuit disagreed, stating:

> Congress imposed no such condition, but rather directed the beginning of the Secretary's duty as "not later than January 31, 1998," without qualification or condition. The only limitation placed on the Secretary's duties under (B) is that that duty is "in return for the payment of fees established by this section." The Department's treatment of this statute is not an interpretation but a rewrite. It not only blue-pencils out the phrase "not later than January 31, 1998," but destroys the quid pro quo created by Congress. 88 F3d at 1276.

Likewise, the ICC interpretation in *American Trucking* is not an interpretation but a rewrite. Such a reading of the SSRS similarly blue pencils out and obliterates the express language of the SSRS in establishing the November 15, 1991 deadline and blue pencils in the words "for the 1991 calendar year." Michigan's fee, as applied to Petitioner, both before and after the change in the methodology for determining reciprocity, never exceeded $10 per vehicle. Moreover, Michigan actually collected $10 per vehicle from Yellow Freight before November 15, 1991, and without protest.

C. The interpretation of 49 USC 14504(c)(2)(B)(iv)(III) in *American Trucking* is erroneous since it effectively moves the cut-off deadline of November 15, 1991 back to the fall of 1990.

The ICC's interpretation in *American Trucking* countermands the intent and specific directive of Congress by effectively moving the Congressional imposed cut-off date of November 15, 1991 back to the fall of 1990 when the fees for

the registration year 1991 were collected by the States. The ICC's *American Trucking* interpretation is contrary to the general principle that legislation is prospective only, and does not have retroactive effect unless that intent is stated in the clearest terms.[8] Retroactive effect should be strictly construed, and Congress's express retroactive date of November 15, 1991 is not subject to agency tinkering and misinterpretation. The ICC's attempt to move the date retroactively further back is not supported by language in the SSRS and it cited no basis for this interpretation.

D. The interpretation of 49 USC 14504(c)(2)(B)(iv)(III) in *American Trucking* is contrary to Congress's intent because it frustrates the goal of achieving uniformity in fee payment and collection and is inconsistent with the long-term practice of the states to collect registration fees in the fall.

The ICC's interpretation in *American Trucking* is contrary to the overall intent and purpose of the SSRS which was to promote uniformity and administrative efficiency with respect to fee payments and their collection. As a relevant Congressional Report states:

> Fee revenues under this system must be collected through a streamlined administrative process established by Section 406 known as the "single state" or "base state" registration system. Under the single state registration system, a carrier will pay its annual fees to a single state (its base state) and that state will distribute the collections to other participating states in which the carrier's vehicles operate. *This system is to be instituted* by the Interstate Commerce Commission, in consultation with the participating states and the trucking industry, *in such a manner as to eliminate as*

[8] *Kaiser Aluminum & Chemical Corp v Bonjorne, et al,* 494 US 827; 110 S Ct 1570 at 1576; 102 L Ed 2d 842 (1990).

> *much of the paperwork and other compliance burdens as possible.* Section 405 specifies that the only evidence of payment or other identification a vehicle must carry under this system is a copy of the receipt given the carrier by the base state. H.R. Conf. Rep. No. 102-104, 102nd Congress, 1st Sess 437-438 (November 26, 1991). Reprinted in 1991 USCCAN 1679, 1817-1818. (Emphasis added.)

As the D.C. Circuit noted in *Wisconsin Electric, supra:* "[l]ike the judiciary, the agency is bound to follow the law as Congress passed it and the President signed it." 778 F2d at 8. The ICC is not at liberty to override the clearly expressed intent of Congress that the cut-off date for fee changes is November 15, 1991. The ICC moved the deadline back nearly a year when it ignored the statutory November 15, 1991 deadline.

The ICC's interpretation in *American Trucking* is inconsistent with the long-term practice of the states, on a nationwide basis, to collect state annual application or renewal fees for the next registration year in the fall of the preceding year. Additionally, the multi-state practice under the SSRS follows the same pattern, i.e. the collection of fees for the next year occurs in the fall of the preceding year.[9] If Congress had intended to countermand a nationwide practice in this portion of the SSRS statute, surely it would have explicitly so stated. Michigan has always collected and continues to collect these state SSRS fees each fall for the next registration year.

[9] The practice of collecting fees for renewals in the fall of each year for the next calendar year is consistent with Michigan law concerning all other state motor carrier fees (e.g., Art VI, MMCA, MCL 478.6, *et seq*). Further, that same procedure is expressly mandated under the present multi-state manual used to administer the collection of SSRS fees.

E. The interpretation of 49 USC 14504(c)(2)(B)(iv)(III) in *American Trucking* is contradicted by its interpretation of the day-specific deadline of January 1, 1991 in 49 USC 14504(c)(2)(D) and inconsistent with its regulations implementing the SSRS.

After Respondents implemented the change from base-plating to principal place of business for determining reciprocity with respect to registration fees, Congress continued its work on proposed legislation that was later to become the SSRS. The history of this legislation helps explain why Congress chose November 15, 1991 as the cut-off date for fees. The House Bill, which passed on October 23, 1991, would have eliminated the state registration system and the related fees. In their place, the bill would have provided for a one-time $50 million grant to "bingo" program States, including Michigan, to offset unexpected revenue losses. The Senate Bill, passed on October 31, 1991, did not deal with the subject at all. The provisions creating a single state registration system emerged from the Conference Committee convened during November of 1991. See, H.R. Conf. Rep. No. 404, 102nd Cong., 1st Sess. 437 (1991), *reprinted in* 1991 USCCAN, 1526, 1679, 1817. The ISTEA, which included the SSRS, was enacted on November 26, 1991.

There are three statutory provisions pertinent to this issue. First, 49 USC 14504(c)(2)(D)[10] provides that:

> Only a State which, as of January 1, 1991, charged or collected a fee for a vehicle identification stamp or number under Part 1023 of title 49, Code of Federal Regulations, shall be eligible to participate as a registration State under this subsection or to receive any fee revenue under this subsection.

[10] Originally codified as 49 USC 11506(c)(2)(D).

The foregoing section like 14504(c)(2)(B)(iv)(III) contains a day-specific deadline. Significantly, when the ICC "interpreted" the foregoing section, it found the January 1, 1991 deadline to be clear:

> We conclude that Kentucky is not eligible to participate in the Single State Registration System. The statute is clear that only states which, as of January 1, 1991, charged or collected a fee for a vehicle identification stamp or number under the predecessor system at 49 C.F.R. Part 1023 are eligible to participate.
>
> * * *
>
> Significantly, while every participating state required carriers to use the Form D "bingo" card described in Subpart D, Kentucky did not. *As of January 1, 1991,* if a Kentucky enforcement officer were to ask a driver to present a cab card evidencing vehicle registration and the driver presented only a "bingo" card, the driver would have been subject to a fine.

American Trucking Associations, supra, 9 ICC2d at 1192-1193. (Emphasis added.) Thus, inexplicably, while the ICC finds the January 1, 1991 deadline in 49 USC 14504(c)(2)(D) to be a clear and day-specific date and enforces it as such, it finds the November 15, 1991 deadline in 49 USC 14504(c)(2)(B)(iv)(III) to mean something other than the November 15, 1991 day-specific date that is plainly stated. The better, more consistent view is that both day-specific deadlines should be given full force and effect.

Second, § 14504(c)(2)(B)(iv)(III)[11] provides that each participating State shall establish a fee system … that …"will result in a fee for each participating State that is equal to the fee, not to exceed $10 per vehicle, that such State collected or

[11] Originally codified as 49 USC 11506(c)(2)(B)(iv)(III).

charged as of November 15, 1991." The statute further provides, at § 14504(c)(2)(C), that "[t]he charging or collection of any fee under this section that is not in accordance with the fee system established under subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce."

The dual purposes of the legislation as made clear by the Conference Committee, were "to benefit the interstate carriers by eliminating unnecessary compliance burdens" and "to preserve revenues for the states which had participated in the bingo program." H.R. Conf. Rep. No. 404, 102nd Cong., 1st Session 437 (1991). To further these ends, Congress directed the ICC to prescribe regulations implementing a single state registration system consistent with the provisions of Section 4005 of the ISTEA. Pursuant to this statutory directive, the ICC issued on May 11, 1992, an Advance Notice of Proposed Rulemaking requesting public participation, 57 Fed. Reg. 20,072 (1992) and on January 22, 1993, the ICC issued a Notice of Proposed Rulemaking requesting public comments. 58 Fed. Reg. 5,951 (1993). The ICC received 52 comments, including comments from the MPSC. Two major issues emerged from the comments: (1) who will be responsible for generating copies of registration receipts; and (2) whether participating States must consider fees charged under reciprocity agreements among the states when determining the fees charged as of November 15, 1991. 9 ICC2d at 612. Regarding the second issue, which is pertinent to the fee collection issue, the American Trucking Associations (ATA) urged the ICC to require fees to be based on "the terms of the [reciprocity] agreement in effect as of November 15, 1991." *Id.* at 618. Notably, no party raised the issue of whether Congress intended the phrase "fees collected as of November 15, 1991" to refer to fees related to the 1991 registration year but not the 1992 registration year.

On May 18, 1993, in *Single State Insurance Registration Ex Parte No. MC-100 (Sub-No. 6),* 9 ICC2d 910 (1993), the ICC adopted final regulations replacing the multi-

State motor vehicle registration system. Under the implementing regulations, carriers were required to: (1) file proof of insurance with a single participating registration State; (2) pay fees to the State to be allocated among all participating States in which the carrier operates; and (3) keep in each of their vehicles a copy of a receipt issued by their registration State. The Commission's new regulations were codified at 49 CFR Part 1023. Several provisions of the regulations are pertinent to the issue in this case. First and foremost, the ICC in *Single State* did not construe the phrase "fees charged or collected as of November 15, 1991" as relating only to fees for the 1991 registration year but excluding fees charged or collected by that date but for the 1992 registration year. Instead, the ICC's implementing regulation mirrored the statutory requirement limiting fees to those that were "charged or collected" as of November 15, 1991. *See,* 49 CFR 1023.4(c)(4)(ii). Second, the ICC adopted regulations requiring carriers to register in the state in which they maintain their principal place of business. 9 ICC2d at 620. Third, the ICC concluded that reciprocity agreements should be frozen as of November 15, 1991. *Id.* at 618-619.

Respondents' actions are entirely consistent with the ICC's foregoing determination with respect to its regulations. Respondents did not raise its fees either before or after November 15, 1991. Michigan's fees were $10.00 at all relevant times, in accordance with MCL 478.7(4). The only change to the Michigan fee system was to replace its base-plating method of determining reciprocity with a principal place of business method. This change was undertaken in early 1991 and put into effect in September 1991 when Michigan mailed applications to motor carriers operating vehicles in Michigan. As such, this change was entirely consistent with the ICC's holding in *Single State Insurance Registration,* 9 ICC2d 610 (1993), 618 that froze "the terms and conditions of [reciprocity] agreements in effect as of November 15, 1991 ..."

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted

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Dated: September, 2001

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STATE OF MICHIGAN

BEFORE THE COURT OF CLAIMS

YELLOW FREIGHT SYSTEM, INC.,

Plaintiff-Claimant, Case No. 95-15706-CM

v Hon. William E. Collette

STATE OF MICHIGAN, MICHIGAN DEPARTMENT OF TREASURY AND ITS STATE TREASURER, MICHIGAN DEPARTMENT OF COMMERCE AND ITS DIRECTOR AND MICHIGAN PUBLIC SERVICE COMMISSION AND ITS COMMISSIONERS, JOHN G. STRAND, RONALD E. RUSSELL AND JOHN L. O'DONNELL,

Defendants-Respondents. /

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AFFIDAVIT OF THOMAS R. LONERGAN

STATE OF MICHIGAN)
) ss
COUNTY OF INGHAM)

I, Thomas R. Lonergan, having been duly sworn and deposes state as follows:

1. I am presently and was at all times pertinent to the above action, employed by the Michigan Public Service Commission in the capacity as Director of the Motor Carrier Regulation Division.

2. I have personally reviewed the Plaintiff's Complaint filed in the above action and am familiar with the contents of same.

3. Contrary to the factual allegations contained in Plaintiff's Complaint the following is a true and accurate description of the events which are the subject of the Plaintiff's Complaint:

a. Prior to 1988 the Michigan Public Service Commission had reciprocity agreements with several states and provinces pertaining to fees for trucks in interstate commerce.

b. 347 Public Act 1988 amended the Motor Carrier Act and established a new requirement that the Michigan Public Service Commission begin charging regulatory fees for vehicles of interstate, foreign and interstate exempt motor carriers operated in Michigan.

c. 347 Public Act 1988 was amended by 221 Public Act 1989.

d. Until that time, the State of Michigan had not issued cab card stamps to interstate, foreign and interstate exempt motor carriers.

e. Commencing in the fall of 1989 for the calendar year beginning January 1, 1990, the Michigan Public Service Commission began issuing cab card stamps, commonly referred to as "bingo stamps".

f. Under the above act, Michigan was required to charge vehicles from other states $10.00 for the stamp. However, the act permitted the Commission to enter into reciprocal agreements with other states or provinces of Canada that did not charge vehicles licensed in this state regulatory fees, permitting the waiving of $10.00 fees to vehicles licensed in those provinces or states.

g. On August 2, 1989 Chairman William Long sent a letter to all states and provinces canceling any previous reciprocity agreements.

h. For purposes of the new act, the Michigan Public Service Commission Staff contacted other states and provinces to determine if they were in fact charging a fee to Michigan vehicles.

i. The Public Service Commission made a policy decision not to charge a fee to carriers with vehicles registered in states or provinces which did not charge Michigan-based carriers a fee.

j. Under the above-described system, Yellow Freight which had 3,730 vehicles base plated in Illinois and Indiana, was not charged for those cab card stamps as those states did not charge fees for vehicles based in Michigan. Yellow Freight was charged for five vehicles which were base plated in Oklahoma. (Attachment 1). This system was in effect for calendar years 1990 and 1991.

k. After two years of administration of the cab card stamp program using the system of determining fees and reciprocity waiver based on the state of vehicle registration, it became evident that this system was unduly complex and inefficient to administer. A cab card application could include vehicle registrations in many different states requiring several calculations and the possibility of error in reciprocity waivers. It also became apparent that Michigan was one of very few, and possibly the only, state using this system as opposed to the principal place of business system. Further, work was proceeding on legislation in Washington to mandate a single base state program and this would require a uniform approach by the participating states.

l. The Public Service Commission made a policy decision in 1991 to change to a system utilizing the principal place of business as the basis for fees and reciprocity. This decision was made in early 1991 and the revised renewal applications were mailed to all interstate motor carriers in September of 1991. This clearly pre-dated the effective date for freezing fees and reciprocity, being November 15, 1991.

m. The above changes are reflected in the attached cab stamp application forms. Attachment No. 1 is the renewal for the 1991 cab stamps and indicates in paragraph 8 that the fee schedule is based on the fee charged by the state in which the company's vehicles are commercially base plated. Attachment No. 2 is the renewal form mailed and used in 1991 for the 1992 registration year. This form states that the fee schedule is based on the state or province in which the company is based.

n. Thus, no reciprocity agreements were changed. Rather, for efficiency reasons and to be in compliance with the SSRS the MPSC based reciprocity on the state in which a company was located rather than the states in which the vehicles were base plated.

o. Under the "base plating" system Yellow Freight, with a substantial number of trucks base plated in the states of Illinois and Indiana, did not pay fees due to reciprocity arrangements with those states.

p. After the system was changed basing reciprocity on a company's principal place of business, Yellow Freight had to pay fees as its principal place of business was in Kansas. Michigan had no fee waiver with the State of Kansas. Other motor carriers would have paid less as a result of the change if they were based in a state with which Michigan had a fee waiver.

q. 49 USC § 11506 sets forth the fee systems and states in part:

> Will result in a fee for each participating state that is equal to the fee, not to exceed $10.00 per vehicle, that such state collected or charged as of November 15, 1991;

Pursuant to the above, it was determined that fees would be based on fees collected and charged as of November 15, 1991.

r. In the instance of Yellow Freight that fee was based on the fees charged and collected as of November 15, 1991. (See Exhibit 2). The application form with payment was received on October 3, 1991 as well as payment in full. This established that the Michigan system in place as of November 15, 1991 was the "principal place of business" system and has been continued each year thereafter.

s. The above method of fee collection was made in good faith with the understanding that same was in accord with the newly enacted SSRS which was to become effective on January 1, 1992.

4. At all times during my contacts with the Plaintiff, if any, I acted in good faith, within the scope of my authority and in my official capacity as a public employee of the State of Michigan and not in my personal capacity.

5. If sworn I can competently testify to the facts set forth in this Affidavit.

Further affiant sayeth not.

/s/
Thomas R. Lonergan, Director
Motor Carrier Regulation Division
Michigan Public Service Commission

Subscribed and sworn to before me this
9th day of October, 1995.

/s/
Pamela A. Cabic, Notary Public
Eaton County, Michigan
My Commission Expires: 2/4/98

STATE OF MICHIGAN

IN THE COURT OF CLAIMS

SCHNEIDER NATIONAL CARRIERS, INC.;
SCHNEIDER TRANSPORT, INC.;
SCHNEIDER NATIONAL BULK CARRIERS, INC.;
SCHNEIDER TANK LINES, INC.;
and
SCHNEIDER SPECIALIZED CARRIERS, INC.,

Plaintiffs-Claimants,

v

STATE OF MICHIGAN,
MICHIGAN DEPARTMENT
OF TREASURY AND ITS STATE
TREASURER; MICHIGAN DEPARTMENT
OF CONSUMER AND INDUSTRY SERVICES
(FORMALLY MICHIGAN DEPARTMENT OF
COMMERCE) AND ITS DIRECTOR;
MICHIGAN PUBLIC SERVICE COMMISSION
AND COMMISSIONERS, JOHN G. STRAND,
JOHN C. SHEA, AND DAVID A. SVANDA;
AND THOMAS LONERGAN,

Defendants-Respondents.

OPINION AND ORDER

Hon. Peter D. Houk

File No. 96-16473-CM

OPINION

This matter is before the Court on Defendants'-Respondents' Motion for Summary Disposition and Plaintiffs'-Claimants' Motion for Partial Summary Disposition and Alternative Motion to Stay Proceedings and Refer Issues to the United States Department of Transportation. Having reviewed

the briefs and heard Oral Argument on June 16, 1997, the Court issues the following Opinion and Order:

Facts

The Plaintiffs-Claimants (Schneider) are international for-hire trucking companies doing business in Michigan. Schneider is requesting a refund of all fees paid under the Motor Vehicle Single State Registration System (SSRS). 49 USC 11506 *et seq*, recodified at 49 USC 14504, effective January 1, 1996. The SSRS is part of the Intermodal Surface Transportation Efficiency Act. 49 USC 101 *et seq*. Under the SSRS, states may assess interstate motor carriers a fee of no more than $10 per vehicle, not to exceed the amount that the state collected or charged as of November 15, 1991. This Opinion will reference 49 USC 11506. The corresponding parts of section 14504 are substantially the same to their counterpart in section 1506. The Court recognizes that Plaintiffs' claim for refund for fees paid in 1996 and after are pursuant to section 11504.

Under rules promulgated by the ICC at 49 CFR 1022, states entered into various reciprocity agreements. For purposes of determining reciprocity, Michigan would determine in which state a vehicle was registered. If that state had a reciprocity agreement with Michigan, the company would be assessed fees accordingly. Michigan and Illinois had such an agreement. Under Michigan's reciprocity agreements, Michigan did not charge fees for vehicles registered or "base plated" in states which did not charge fees for Michigan vehicles in interstate commerce. Under this system, Schneider vehicles were not charged cab stamp fees for vehicles base plated in Illinois, as Illinois did not charge fees for vehicles base plated in Michigan.

The ICC promulgated rules at 49 CFR 1023 whereby each motor carrier would pay all assessed fees through its home state. Each home state was required to collect and remit fees charged by other states on their behalf. The purpose of the

act was for efficiency. In expectation of the enactment of the SSRS, Michigan changed its method of determining reciprocity. The Michigan Public Service Commission decided that reciprocity was to be based on the principle place of business of a carrier rather than the state in which the vehicle was base plated. This change was effected in 1991.

For the registration year 1991, Schneider's vehicles were base plated in Illinois. Accordingly, Michigan did not charge fees to Schneider for the calender year 1991, due to the informal reciprocity agreement it had with Illinois. However, for 1992 and beyond, Michigan did charge the ten dollar ($10) fee to Schneider since Schneider's principle place of business is Wisconsin, a state which never shared reciprocity with Michigan.

Schneider filed a claim for refund for all fees paid for the years 1994-1997. The State denied all claims with the exception of an overpayment made for 1996.

Analysis

TIME BARRED

The first issue is whether Plaintiffs' claims are time barred. MCL 600.6431(1); MSA 27A.6431 requires that a plaintiff file a written notice of intention to file a claim against the state within one year after the claim has accrued. In this case, Plaintiffs' claims may not be dismissed because Defendant produced no evidence attempting to show that it was actually prejudiced. See May v Dept of Natural Resources, 140 Mich App 730; 365 NW2d 192 (1985).

SSRS

The pertinent part of the Federal Statute which governs the Single State Registration System is at 49 USC 11506(c)(2) and reads in part as follows:

(2) Specific requirements.—

(A) Evidence of certificate; proof of insurance; payment of fees.—Under amended standards, implementing the single State registration system described in paragraph (1) of this subsection, only a State acting in capacity as registration State under such single State system may require a motor carrier holding a certificate or permit issued under this subtitle—

(i) to file and maintain evidence of such certificate or permit;

(ii) to file satisfactory proof of required insurance or qualification as a self-insurer;

(iii) to pay directly to such State fee amounts in accordance with the fee system established under subparagraph (B)(iv) of this paragraph, subject to allocation of fee revenues among all States in which the carrier operates and which participate in the single State registration system; and

(iv) to file the name of a local agent for service of process.

(B) Receipts; fee system.-Such amended standards—

* * *

(iv) shall establish a fee system for the filing of proof of insurance as provided under subparagraph (A)(ii) of this paragraph that . . . (III) will result in a fee for each participating State that is equal to the fee not to exceed $10 per vehicle, that such State collected or charged as of November 15, 1991; and

* * *

(C) Prohibited fees. The charging or collection of any fee under this section that is not in accordance with the fee system established under subparagraph (B)(iv) of this paragraph shall be deemed to be a burden on interstate commerce. (Emphasis added).

The statute limits the fee charged to the fee that the state charged as of November 1, 1991 with the limitation that the fee may not exceed $10.00.

Plaintiffs rely on Yellow Freight System, Inc v State of Michigan, Court of Claims No. 95-15706 CM, March 13, 1996, for its claim of refund. Yellow Freight was granted summary disposition and a refund of SSRS fees paid for the years 1994-1996. Those fees were paid under SSRS through Yellow's base state of Kansas. The case is now on appeal to the Court of Appeals.

In Yellow Freight, the Court of Claims granted deference to the ICC's decision in American Trucking Ass'ns - Petition for Declaratory Order - Single State Insurance Registration, 9 ICC 2d 1184 (1993). The State of Michigan took the position that although no fee was charged or collected for 1991, there was a fee for 1992 that was charged and collected in 1991 prior to November 15, 1991. The State believed that, therefore, they were permitted to charge the ten dollar ($10) fee in 1994 and beyond. Yellow asserted that since no fee was charged in 1991, the State was precluded from assessing a fee.

The present issue of whether the statutory language concerning the "fee charged or collected as of November 15, 1991" relates to fees charged for the 1991 registration year or for the 1992 registration year was raised by Yellow in American Trucking. Id at 47,364. The ICC interpreted the SSRS, stating that "[w]e think it clear that the statutory language concerns only fees charged or collected for the 1991 registration year, . ." Id at 47,365. Yellow advanced the interpretation to the Court of Claims, which in turn, deferred to the ICC interpretation. Yellow, supra at 4. The result was a refund ordered. Id. Schneider adopts this argument claiming that it is in accord with Congressional intent to freeze fees as of November 15, 1991.

The SSRS is a comprehensive regulatory scheme created under federal law. Congress has charged the ICC with its implementation. This court would normally grant deference to the statutory interpretations of the Act by the ICC. However, it is this court's opinion that the Commission erred. The question presented by Yellow to the ICC relates to which year the charged fees apply. The reply by the ICC, however, concerns the year in which the fees are to be 'charged or collected. The reply does not answer the question. The reply cannot refer to 1991 fees, as Plaintiffs interpret. This would lead to absurd results as discussed below. Even assuming that the ICC did properly address the issue presented, the only logical interpretation is that the ICC is referring to 1992 fees that are charged or collected in 1991.

This Court disagrees with the Plaintiffs' argument, that because the statutory language concerns fees charged or collected for the 1991 registration year, and that they did not pay fees in 1991, that they do not have to *ever* pay fees because the statutory language freezes the fees owed to those charged or collected as of November 15, 1991. The State collects application or renewal fees in the fall of the year for the next calender year. Defendants assert that this is done to ensure proper payment and registration for services to be provided for an entire year. The basis for determining the amount to be charged or collected from a carrier is by the location of the company's principle place of business. The fact that an individual carrier was not assessed fees one year and was assessed fees the next year is irrelevant. The determining factor is location and is not focused on the individual carrier's mere existence. This narcissistic argument produces absurd results. It is a basic rule of statutory construction carried over from common law that absurd results should be avoided. Fortunate v Dept of Transp, 449 Mich 911; 538 NW2d 669 (1995). If, for example, a carrier expands operations into the State of Michigan after November 15, 1991, then the State will be forever precluded from assessing a fee because the State did not previously assess a fee against that carrier's vehicles. Even more absurd is the situation where a carrier was not yet in

existence as of November 15, 1991. In that case, all participating states would be precluded from assessing fees against that carrier because it never paid fees to any state prior to November 15, 1991. These possible results are contrary to the legislative intent of creating a fee system for the filing of proof of insurance.

In summary, the interpretation that the effective date of November 15, 1991 pertains to fees collected for the 1991 calendar year is contrary to the plain meaning of the statute. The proper interpretation is that the SSRS applies to fees charged and collected for the 1992 calender year. Therefore, Schneider is responsible for the fees as their principle place of business is Wisconsin, a state without reciprocity with Michigan.

NOTICE

The notice issue is of limited applicability to this case as the court does not defer to the above ICC interpretation. The notice issue is applicable, however, to Defendants' Tenth Amendment argument.

Defendants argue that the ICC declaratory order decision in American Trucking is not binding because the State did not receive adequate notice of the proceedings, the issues did not involve Michigan issues and, since Michigan did not participate, the ICC did not have the benefit of Michigan policy. Plaintiffs argue that an agency need not conduct an individualized hearing and adjudication before issuing a declaratory ruling under 5 USC 554(e).

An "'order' means the whole or part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing." 5 USC § 551(6). "'Adjudication' means agency process for the formulation of an order." 5 USC § 551(7). Section 554 which applies in all cases of adjudication with six exceptions that are not applicable

here, provides that persons entitled to notice of an agency hearing shall be timely informed of the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing is to be held; and the matters of fact and law asserted. The Interstate Commerce Commission is bound by requirements of reasonable notice proscribed in 5 USC §54. See North Alabama Exp, Inc v US, 585 F2d 783 (CA 5 1978).

In the instant case, the ICC published notice of the declaratory order proceeding in the Federal Register. 58 FR 48673 (1993). The notice stated that

> The Commission is acting in view of evidence suggesting that States may be in violation of 49 CFR 1023.2(a), 1023.4(c)(4), and 1023.4(g). This action is part of the Commission's continuing effort to clarify its regulations and facilitate smooth operation of the registration system. The Commission is providing interested persons an opportunity to participate in the proceeding and is inviting their comments. This published notice was sufficient to inform the Defendants and all interested parties of the declaratory proceeding and fully complies with 5 USC §554(b), the notice requirement for adjudications.

10TH AMENDMENT

Defendants assert that the ICC finding that "[i]t is inconsistent with the statute for a state to renounce or modify a reciprocity agreement so as to alter any fee charged or collected as of November 15, 1991, under the predecessor registration system", violates the Tenth Amendment of the United States Constitution. American Trucking, Supra at 47,366. Defendants suggest that if the Federal Government forces the States to enter into, alter or repeal a compact, it is a violation of the 10th Amendment.

The United States Court of Appeals in National Association of Regulatory Utility Commissioners v Interstate Commerce Utility Commission, 41 F3d 721 (DC Cir 1994), opined that it is irrelevant whether the Legislature focused on reciprocity and held that the ICC properly determined in American Trucking that, under the ISTE amendments, participating states could not collect fees under new systems in excess of those charged and collected under pre-existing reciprocity agreements.

The Michigan system is consistent with National Association. Michigan merely changed its method of determining which carrier's vehicles were to be assessed fees from the base plating method to the principle place of business of the carrier. Michigan has always, and continues to share reciprocity with Illinois. Likewise, Michigan does not, nor has it ever shared reciprocity with Wisconsin. Michigan continues to charge $10 per vehicle under the ISTEA amendments as it did under the former system. Therefore, the $10 fee charged is not in excess of a pre-existing reciprocity agreement. Neither the ICC's statements concerning reciprocity or the SSRS itself run contrary to the 10th Amendment.

COMMERCE CLAUSE VIOLATION

The parties agree that the underlying statutory authority that allows Michigan to collect fees pursuant to the SSRS is MCL 478.7(4); MSA 22.565(l)(4). That section of the statute reads in relevant part that "[t]he annual fee levied-on each interstate or foreign motor vehicle operated in this state and licensed in another state or providence of Canada shall be $10.00. . . Plaintiff argues that this Section is not consistent with the SSRS and therefore violates the Commerce Clause. Specifically, Plaintiff argues that section 7 authorizes collection of fees for registration of vehicles, while the SSRS at 49 USC 11506(2)(A)(ii) only authorizes collection of fees "to file satisfactory proof of required insurance or qualification as a self-insurer." Plaintiff further claims that this inconsistency is not in accordance with 49 USC 11506(c)(2)(B)(iv) of the

SSRS and pursuant to 49 USC 11506(c)(2)(C), creates a burden on interstate commerce.

A thorough reading of MCL 478.7; MSA 22.565(1) suggests that the statute authorizes fees other than for vehicle registration. MCL 478.7(1) does require the carrier to pay the necessary registration fees before operating the vehicle in interstate commerce. However, 1933 PA 254 as amended by 1989 PA 221 grants the Michigan Public Service Commission broad powers in the arena concerning our public highways and its use by interstate motor carriers. The purpose of the act is to:

> [p]romote safety upon and conserve the use of public highways of the state; to provide for the supervision, regulation, and control of the use of such highways by all motor vehicles operated by carriers of property for hire upon or over such highways; . . . to give the [Michigan Public Service] [C]ommission jurisdiction and authority to fix, alter, regulate, and determine rates, fares, charges, classification, and practices of common motor carriers for such purposes; to require filing with the commission of rates, fares, and charges .... Id.

A copy of a Public Service Commission procedures manual instructs the Commission on how to collect fees pursuant to MCL 478.7(4); MSA 478.7(1)(4). The manual states that "[t]hese fees shall be for filing and maintaining proof of insurance. No other fees shall be collected or assessed either directly or indirectly." MICHIGAN PUBLIC SERVICE COMM'N, SINGLE STATE REGISTRATION SYSTEM PROCEDURES MANUAL (Revised July 1, 1994), p 14. Obviously, fees for the purpose of filing and maintaining proof of insurance is consistent with the stated purpose of the act to promote safety of the public highways. In addition, the broad grant of authority allows the commission to charge and collect fees to further the purpose of the act.

In summary, the legislature implicitly granted the commission the authority to charge and collect fees consistent with the SSRS. The procedures manual is direct evidence that the commission properly assumed that responsibility.

42 USC 1983

For the stated reasons, the Plaintiffs have failed to state a violation of a constitutional right or a federal law. Such a violation would allow a 42 USC 1983 claim. However, Plaintiffs have failed to demonstrate a situation were such a claim exists. Therefore, this claim must be dismissed as to all Defendants.

ORDER

THEREFORE, IT IS ORDERED that for the above stated reasons that Defendants'-Respondents' Motion for Summary Disposition is **GRANTED.**

IT IS FURTHER ORDERED that for the above mentioned reasons, Plaintiffs'-Claimants' Motion for Partial Summary Disposition and Alternative Motion to Stay Proceedings and Refer Issues to the United States Department of Transportation are **DENIED.**

Dated: November 24, 1997

/s/
Hon. Peter D. Houk
Court of Claims Judge

PROOF OF SERVICE

I certify that I mailed a true copy of the above **OPINION AND ORDER** upon all attorneys of record or parties by placing said copy in the first class mail with postage prepaid from Mason, Michigan, on November 24, 1997.

/s/
Ann M. Baird
Judicial Assistant

cc: Ronald J. Mastej
Donald L. Keskey
Judith I. Blinn

Before the
Interstate Commerce Commission

American Trucking Associations—
Petition for Declaratory Order
Single State Insurance Registration
Notice No. 41086

Comments by
Yellow Corporation
10777 Barkley
Overland Park, KS 66211

By: Stephen S. Richards
Manager, Government Relations
September 24, 1993

Yellow Corporation submits these comments in response to the Commission's request for comments in the above referenced declaratory order proceeding, published September 9, 1993. Yellow Corporation is the parent company to a family of transportation related firms that includes Yellow Freight System, Preston Trucking and Saia Motor Freight. Our comments; are in support of American Trucking Associations' (ATA) petition requesting the Commission to determine certain states are ineligible to participate in the Single State Insurance Registration (SSRS) program and that certain state actions will result in fees in excess of those charged or collected by participating states on November 15, 1991.

In 1991 Kentucky required an interstate carrier to place a state-assigned KYU number in the Kentucky square on the bingo card. However, they only required a $10 per company renewal or filing fee. Kentucky never required a per vehicle stamp or identifier under PL 89-170. The $10 per vehicle fee collected by Kentucky was required under their "Reciprocity" or "Tax"

card. Kentucky intends to continue requiring the "Reciprocity" card in 1994 and to participate in the SSRS program with a $10 per vehicle fee. If Kentucky is allowed to participate in SSRS, Yellow Freight and Saia will pay an amount $10 per vehicle greater than paid in 1991. We believe Kentucky does not qualify to participate under SSRS since they did not charge or collect a fee under PL 89-170 in 1991. The Commission should prohibit their participation regardless of any fee since Kentucky did not participate in PL 89-170.

Under the "Bingo Stamp" program, Texas participated in numerous reciprocity agreements where carriers paid from 45¢ to $11 per vehicle. Texas has advised participating states that it will cancel these reciprocity agreements and begin charging all carriers a flat $10 per vehicle fee. We believe Texas should not be allowed to charge a flat $10 per vehicle fee and completely ignore the fees charged on November 15, 1991.

The State of Idaho did not fully participate in the "Bingo Stamp" program in 1991. They did not charge or collect a fee for bingo stamps and only required an annual $25 "filing fee". Idaho General Order No. 179B adopted a permanent rule setting the fee for identification of an interstate motor carrier's vehicle at $2 per vehicle. However, this fee was rescinded for the calendar year 1991. While Idaho may have the ability to participate in SSRS, it should not be allowed to collect a fee under SSRS. No fee was collected on November 15, 1991.

The Commission determined in its previous order that states must continue to observe the reciprocity agreements that had the effect of reducing carriers' fees. We believe Texas and Idaho would be in violation of the Commission's order by being allowed to raise their fees to levels above those collected on November 15, 1991.

The most pertinent issue set forth in ATA's petition deals with the determination of fees to be collected by all participating states. Under the "Bingo Stamp" program, several states had entered into reciprocity agreements allowing lower fees based

upon the motor carrier's principal place of business, its vehicle base registration state or type of operating authority held. States, in developing the matrix of fees to be used under SSRS, have assumed all reciprocity was based On principal place of business. This assumption will result in a revenue windfall for the states and impose an economic burden on the motor carrier industry.

Yellow Freight System's principal place of business is Kansas and it will register its fleet under SSRS with the Kansas Corporation Commission (KCC). In 1991, Yellow was exempt from paying bingo stamp fees to the states of Indiana, Michigan and California. In Indiana and Michigan, the exemptions were granted based upon the reciprocity agreements that considered the vehicle's base plate. In California, the exemption was based on Yellow holding both intrastate and interstate operating authorities. Yellow contacted each of these states to clarify the fees to be collected under the SSRS program. In the case of California, two letters were issued by the California P.U.C. instructing Kansas not to collect fees from Yellow Freight System because of their operating authority.

Indiana recognized that they had historically interpreted reciprocity on the vehicle's base plate bur found continuing this practice under SSRS would present "administrative difficulties". Apparently, North Carolina, Oklahoma and Massachusetts also used vehicle base plate to interpret reciprocity agreements. These states had been informed by other participating states that continuing to interpret agreements with base plate would create tremendous amount of confusion under SSRS. Pressure has been applied on these states to convert to a principal place of business arrangement All four states have been reluctant to stay with their historical interpretation and currently are unwilling to recognize their reduced fees. Accordingly, Indiana has not responded to Yellow's request for clarification.

In the case of Michigan, Yellow Freight received reciprocity on the 1991 Michigan fees because of its Illinois base plate. As a result Yellow paid zero fees to Michigan for 1991. In 1992 Michigan changed the agreement to reflect principal place of business and the increase to $10 per vehicle. Because of the size of Yellow's fleet it purchased 1992 bingo stamps well in advance of display deadlines to complete the administrative process. Now Michigan advises Yellow that its fee under SSRS is $10 per vehicle solely because Yellow purchased its 1992 stamps under the new agreement prior to November 15, 1991. We contend that the intent of ISTEA, in establishing the November 15, 1991 date, was to determine the fee for a 1991 stamp required to be purchased on that date. It is not germane what fee Michigan charged on November 15, 1991 for a 1992 stamp. Therefore, the fee charged Yellow for 1991 bingo stamps was zero due to the reciprocity afforded its Illinois based vehicles and the fee under SSRS should continue to be zero for such vehicles.

On two separate occasions, we specifically discussed these issues with our base state administrator. We were informed the KCC staff was contacting each participating state (including those we feel should not be allowed to participate) to verify fees to be collected. It is our base state administrator's opinion that in collecting fees for other states, Kansas is acting in an agency capacity and would be compelled to collect fees as instructed. The KCC will leave the debate over reduced fees between Yellow Freight System and the respective states. It will then be Yellow's responsibility to attempt to get refunds from those states for which incorrect fees were collected. As a result, Yellow Freight System will be forced to pay fees higher than those paid under PL 89-170 and those collected on November 15, 1991.

We believe the intentions of the Kansas Corporation Commission in collecting higher fees are in direct conflict with the Commission's order requiring recognition of reciprocity agreement fee levels. Furthermore, if Yellow Freight is required to apply to individual states for refunds of fees paid,

Yellow will not receive any benefits from the base state. registration system One of the underlying principles of SSRS is to provide motor carriers a reduction in administrative effort in registering their interstate operating authority. Requirements to file for refunds with individual states for incorrect fees collected by a base state only add to the burden of motor carriers in registering their operating authority. Yellow Freight has not received any indication that states will honor these refund requests since many state agencies do not have the administrative procedures allowing for refunds of SSRS fees. Furthermore, we have been told that certain states have indicated to carriers that they must deal strictly with their base state in all SSRS matters. This will undoubtedly leave the carrier in a position of not being able to even file for a refund.

We recognize that the majority of motor carriers will not encounter these difficulties in determining the correct fees. However, states must recognize all reciprocity agreements and collect only the appropriate fee whenever these exceptions apply to a carrier's operation. We offer as a solution that motor carriers be allowed to provide to their base State documentation supporting reduced fee for 1991 and that the carrier continues to qualify for the fee reduction. Those states having reciprocity agreements, based on other than principal place of business, could develop a list of corresponding states and fees and provide this list to all participating states. This would provide the states knowledge of the reduced fee levels, but place the responsibility on the carrier to request and support a lower fee.

While additional administrative procedures would be required, states must determine fees utilizing all previous reciprocity agreements, otherwise carriers will be burdened with an even greater administrative process than under the "Bingo Stamp" program and potentially be required to pay higher fees. We believe the intention of states to only collect fees under SSRS utilizing the carrier's principal place of business violates the Commission's Order to determine fees observing all reciprocity agreements. Since the SSRS program must be

implemented by January 1, 1994, the Commission must issue its decision expeditiously. All carriers within the Yellow family will need a minimum of 45 days to install the receipt in each of its over 10,000 motor vehicles. We will need an additional 30 days to file our application and obtain the valid receipt with the different state agencies. That only allows a 15 day period for the Commission to issue its decision and the states to adjust the fee schedule.

Respectfully Submitted

Yellow Corporation

/s/
Stephen S. Richards
Manager, Government Relations
913-967-4353

INTERSTATE CAB CARD STAMP APPLICATION
Form B
(Authorized by PL 89-170)

RECEIVED
M.P.S.C.
OCT 3 1991

Authorities & Registration
Division

Instructions:
- Filing this form is required to request Cab Card Stamps. Failure to file may result in citations by the Michigan State Police.
- Type or Print legibly in ink.
- Please read the instructions printed on the back.

1. Application For:
___ New (Original Registration)
X Renewal
___ Additional Stamp registration during the year

2. Check One:
___ ICC Exempt
X ICC Required – Enter the type of Authority below:
X Certificate
___ Permit
___ ETA
___ TA

3. Date:
Sept 27, 1991

4. ICC Operating Authority No.:
MC - 112713

5. Applicant Name: (Enter exactly as it appears on ICC Certificate or Permit)
YELLOW FREIGHT SYSTEM, INC.

6. Address (Enter exactly as it appears on ICC Certificate or Permit)
10990 ROE AVE.
City: OVERLAND PARK
State/Province: KANSAS
Country: JOHNSON
Zip/Postal Code: 66207
Telephone Number: (913) 344-3048

7. Mailing Address: (Complete only if address is different from No. 4)
City: State/Province:
Country: Zip/Postal:
Telephone Number:

8. Applicant's representative to whom inquiries are to be directed: (Name & Title)
J.S. Upton, Licensing Supervisor

CAB CARD IDENTIFICATION STAMPS

Valid cab card identification stamps are required for the vehicles which you intend to operate within the borders of the State of Michigan. The operations recognized by the Interstate Commerce Commission, the operation of your vehicles is subject to the authority issued to you by the Interstate Commerce Commission. An applicant shall not knowingly permit any other person or organization to use the identification stamps issued or assigned under this application.

9. State law provides that the stamp fee levied on each interstate or foreign motor carrier vehicle licensed in another state or province of Canada, be equal to the annual fee under PL 89-170 charged to a Michigan licensed motor carrier in that state or province. See listing on the attached fee schedule for the fee charged to the state/province in which your company is based and enter below:

a. State or Province which is your base of operations: Kansas.
b. Number of Stamps Requested: 3785
c. Total Stamp Fees*: $37,850.00

*Refer to the attached Cab Card Stamp Fee Chart listing.

Under penalty for false statement, I certify that this application is correct, and that I am authorized to file this document. (Federal penalties, maximum of $10,000 or imprisonment for 5 years, or both, 18 U.S.C. 1001: State penalties as prescribed by law.)

Applicant or Authorized Agent Signature: Title:

/s/
J.S. Upton Licensing Supervisor

(Have you attached your payment?)

Instructions:

1. **New applicant and ICC sub registrations**- For a new application or an ICC sub registration you must file Form A in duplicate. The filing fee for a new application is $25. The filing fee for a sub registration is $10. ICC exempt applicants must file Form A-1 in duplicate. The filing fee for an exempt application is $25.

2. **Cab Cards** - ICC regulated carriers, place the identification stamp on Form D, Uniform Identification Cab Card, available from NARUC, P.O. Box 684, Washington DC 20044. Exempt carriers may place the identification stamp on Form D-1, Uniform Identification Cab Card, available from NARUC.

3. **Expiration** - Cab card stamps are issued effective February 1 of the year for which they are issued and expire on January 31 in the succeeding calendar year.

4. **Cab card stamp fees** - The cab card stamp fees are based on the state or province shown on the ICC certificate or permit as the carrier's base of operations. Please refer to the accompanying chart to determine the fees appropriate to your fleet. If your company is registered in a state or province which does not require the payment of a cab card stamp fee, you should still complete the form and order the appropriate number of cab card stamps. If the carrier address has changed, the address must be changed at the ICC and a new certificate or permit issued by the ICC and filed with the State of Michigan.

5. **Insurance** – The State of Michigan does not require interstate or exempt carriers to file a current insurance certificate.

6. **Return mailing address** - If stamps are to be mailed to an address other than listed on line 4 of this application, please enter the mailing address on line 5.

7. **Payment of fees** - Make your check or money order payable to the State of Michigan. Funds must be in U.S. dollars. Payment of fees to accompany this application.

8. **Mailing Address** -

   MICHIGAN DEPARTMENT OF COMMERCE
   PUBLIC SERVICE COMMISSION
   6545 MERCANTILE WAY
   P.O. BOX 30221
   LANSING, MICHIGAN 48909-7504

9. Stamp orders are returned with another Interstate Cab Card Stamp Application for possible use during the time period to add additional vehicles to your fleet. Do not use that application for the following year because the stamp fees are subject to change annually. Stamp purchasers will automatically be mailed next years application sufficiently in advance of the due date.

10. **Questions** – Please call (517) 334-6389.

CAB CARD STAMP FEES

Michigan has changed the basis for ordering cab card stamps from one based on the states or provinces the vehicles in your fleet are registered in, to one based on the company's base of operations shown on the ICC certificate or permit granting the carrier authority. This change should reduce the complexity of ordering cab card stamps. Vehicles requiring a MPSC decal do not need a bingo stamp. Please order MPSC decals on a Michigan equipment list. Do not use Form B to order decals.

$0.00 (Purple)	$10.00 (Orange)
Alaska	Alabama
Alberta	Arkansas
Arizona	British Columbia
California	Colorado
Delaware	Connecticut
District of Columbia	Georgia
Florida	Iowa
Hawaii	Kansas
Idaho	Kentucky
Illinois	Louisiana
Indiana	Maine
Manitoba	Massachusetts
Maryland	Mississippi
Minnesota	Montana
Missouri	New Brunswick
Nebraska	Newfoundland
Nevada	New Hampshire
New Jersey	New Mexico
North Carolina	New York
Nova Scotia	North Dakota
Ontario	Ohio
Oregon	Oklahoma
Pennsylvania	Prince Edward Island
Quebec	Rhode Island
Saskatchewan	South Carolina
Texas	South Dakota
Vermont	Tennessee

Wyoming	Utah
	Virginia
	Washington
	West Virginia
	Wisconsin

Vehicles based in Michigan are required to have a $100 MPSC decal only, except for household carriers which are required to have a $50 MPSC decal only.

If you have any questions or need any forms please contact the MPSC at (517) 334-6389.